

Rebecca Hankins David Roach
20 Center Dr Crawfordsville Indiana
Zip exempt DMM 602 1.3 e2
765-562-7378

INDIANA FEDERAL DISTRICT COURT
SOUTHERN DISTRICT

REBECCA JANE HANKINS, DAVID
JAMES ROACH,,

Plaintiff,

vs.

SHERRI BENTLEY, MONTGOMERY
COUNTY ASSESSOR, WINGATE
PROPERTIES LLC BY VINCENT C.
KREGAR.35277-49, MONTGOMERY COUNTY

Defendant

Case No.: 1:22-CB-80-JMS-DLP

COMPLAINT FOR EMERGENCY
INJUNCTIVE RELIEF FOR POSSIBLE
WRIT OF ASSISTANCE

Complaint for Emergency Injunctive Relief for possible writ of assistance

This is an action in reverse deficiency proceedings to initiate a writ of
replevin for recovering property exempt from taxation was taken and sold under color of
law and under color of official office.

Deprivation of property rights by a person acting under color of law may
constitute a deprivation of rights secured by the United States Constitution and laws.
The rights, privileges, and immunities referred to in the Civil Rights Act, providing that
any person who, under color of law deprives a citizen of any rights, privileges, or
immunities secured by the United States Constitution and laws shall be liable to the
party injured,¹ It include not only strictly personal rights but also property rights.² A
taking claim brought pursuant to the Act is predicated upon the Federal Constitutional
requirement of the Fifth Amendment that the government may not take private property

1 without just compensation.3. See Exhibit I14 C.J.S. Civil Rights § 109 Deprivation of
2 rights by person acting under color of law, generally

3 I/we Rebecca Jane:-Hankins & David James:-Roach (hereinafter plaintiffs)
4
5 two of the people on the land hereby give notice of demand for reverse deficiency
6 proceedings on property known as 20 Center Drive Crawfordsville, Indiana . DMM 602
7
8 1.3 e2 zip exempt

9 I/we Rebecca Jane:-Hankins & David James:-Roach are not a member of
10 the bodies politic and corporate.

11
12 Plaintiffs now give notice that both plaintiffs are real parties in interest; as
13 plaintiff David James: -Roach lives; at the property in question, & has Cash
14 monies; in sum total of approximately 50,000.00 dollars invested in repairs, to said
15 property, and sweat equity, of 50,000.00 dollars totaling 100,000.00 thousand
16 dollars, & 0 cents.

17
18
19 Plaintiff Rebecca Jane:-Hankins also lives at the property in question, which
20 was held in a fee simple Allodial state free hold under conventional ownership by
21 Rebecca Jane:-Hankins who also retains sweat equity & cash monies in the
22 property in question, in the sum total of 80,000.00 dollars over approximately forty
23 year; period.

24
25 I Rebecca Hankins & David Roach hereby give notice of reverse deficiency
26 proceedings for property known as 20 Center Drive Crawfordsville, Indiana for lack of
27 offer and payment of the remaining value of said private property for personal use held
28

1 in a fee simple free hold under conventional ownership the state unlawfully sold without
2 paying.

3 This is an action in reverse deficiency proceedings to initiate a writ of replevin for
4 recovering property & damages which was held in a fee simple Allodial state free hold
5 under conventional ownership, that was unlawfully/fraudulently taxed and unlawfully
6 sold for a private purpose constituting a taking of private property in violation of the
7 State and Federal constitutions.
8

9 First Wingate properties LLC was in negotiations for the return of the property in
10 questions known as 20 Center drive. Wingate properties LLC left the negotiations with
11 James Ray Roach Rebecca Jane:-Hankins eldest son, a former Contract employee of
12 the DOD/Air Force One; now medically retired due to being a Marine War-Time 100%
13 Service-Connected disabled veteran. Wingate properties LLC has alleged they paid
14 over thirty thousand dollars which they are demanding a ridiculous price gauging 12%
15 interest rate over 15 years over \$500.00 a month from James Ray Roach. Wingate
16 properties LLC left and filed this writ of assistance with no warning they were leaving
17 negotiations to file for a writ of assistance. Wingate properties LLC is unaware they
18 don't have lawful ownership due to Montgomery County assessor assessing and taking
19 exempt property under color of law, because Wingate properties LLC left negotiations
20 with no notice.
21
22
23

24 :Rebecca Jane:- Hankins is the lawful owner as the court will see herein.

25 :Rebecca Jane:- Hankins and all who dwell at 20 Center Drive are not squatters.
26
27
28

1 Rebecca Jane: -Hankins & David James: -Roach are filing in Federal District
2 court to sue for damages and the return of the Exempt property unlawfully assessed
3 taxed and stolen.
4

5 This is the second time I/we Rebecca Hankins & David Roach have had to file for
6 the recovery of the private property in question held in a fee simple Alodial state free
7 hold under conventional ownership the first time was filed in February, 2015 then
8 exempted by Ind. Code 6-1.1-2-7 § (1) (2) &(3) Exempt property to which the assessor
9 immediately discharged the alleged tax and returned the property without disputing the
10 properties status as untaxable. So, after agreeing in 2015 the property wasn't taxable;
11 why has the assessor unlawfully knowingly taxed and sold the property a second time.
12
13

14 **Effective: July 1, 2019** See Exhibit A Ind Code § 6-1.1-2-7 Exempt property
15 Sec. 7. (a) As used in this section, "nonbusiness personal property" means
16 personal property that is not:
17

- 18 (1) held for sale in the ordinary course of a trade or business;
19 (2) held, used, or consumed in connection with the production of income; or
20 (3) held as an investment.

21 **see exhibit B** Ind. Code § 6-1.1-1-11 (3) "Personal property" defined § (3) all
22 other tangible property (other than real property) which: (A) is being held as an
23 investment; or (B) is depreciable personal property; as Ind. Code § 6-1.1-1-11 (3)(a) (b)
24 Excludes only. real property which: (A) is being held as an investment; or (B) is
25 depreciable personal property, and Ind. Code § 6-1.1-1-19 "Tangible property" defined
26 Sec. 19. "Tangible property" means real property and personal property as those terms
27 are defined in this chapter. effective through July 1, 2021see Exhibit C Ind. Code § 6-
28

1 1.1-1-19. So Rebecca Jane:-Hankins real property known as 20 Center Drive
2 Crawfordsville, Indiana is included under Ind Code § 6-1.1-2-7(1) (2) &(3) Exempt
3 property.
4

5 I Rebecca Hankins & David Roach also attempted four 4 times to file an
6 acceptance of deed showing the property was not:

7 (1) held for sale in the ordinary course of a trade or business;

8 (2) held, used, or consumed in connection with the production of income; or

9 (3) held as an investment.
10

11 The property in question was private property for personal use held in a fee
12 simple Allodial state free hold under conventional ownership. However the ladies in the
13 recorder's office refused to file my acceptance of deed 4 times. Then refuse to identify
14 themselves to prevent me from pursuing a writ of mandamus to make them file my
15 acceptance of deed. showing my property exempt property under Exhibit A Ind. Code 6-
16 1.1-2-7 § (1) (2) &(3) Exempt property.
17

18 The assessor has acted under color of law and under color of official offices
19 violating the Hobbs Act. A federal statute, known as the Hobbs Act, provides that
20 "whoever in any way or degree obstructs, delays, or affects commerce or the movement
21 of any article or commodity in commerce, by robbery or extortion or attempts or
22 conspires so to do, or commits or threatens physical violence to any person or property
23 in furtherance of a plan or purpose to do anything in violation of this section shall be
24 fined under this title or imprisoned not more than twenty years, or both."¹ The Hobbs Act
25 defines "extortion" to mean the obtaining of property from another, with his or her
26
27
28

consent, induced under (among other things) color of official right.² see Exhibit D 35

C.J.S. Extortion § 13 Extortion under Hobbs Act, generally

Common-law extortion was a property offense committed by a public official who took any money or thing of value that was not due to him or her under the pretense that he or she was entitled to such property by virtue of his or her office.¹ Extortion by a public officer has been defined as the corrupt demanding and receiving by an officer, by color of office, of money or other thing of value, that is not due at all, or more than is due, or before it is due.² See Exhibit W 31A Am. Jur. 2d Extortion, Blackmail, etc. § 6 Generally

In order to constitute extortion, the taking must take place under color of office—that is, under the pretense that the officer is entitled to the fee by virtue of his or her office.¹ This requires that the service rendered must be apparently, or pretended to be, within official power or authority, and the money or thing of value must be taken in such apparent or claimed authority.² See Exhibit V 31A Am. Jur. 2d Extortion, Blackmail, etc. § 9 Color of office

Any public officer clothed with official privileges and duties may be prosecuted for the offense of extortion under color of office whether he or she is a federal, state, or local officer or an executive, legislative, or judicial officer.¹ Any person occupying an official or quasi-official position may be guilty of the offense.² See Exhibit X 31A Am. Jur. 2d Extortion, Blackmail, etc. § 8 Who may commit offense

Whether a tax assessment may be abated upon the ground that the assessors included property not subject to taxation (either because it was expressly made exempt by controlling statutes, because it was not property of the kind subjected to taxation by

1 the general revenue statutes of the taxing jurisdiction, or because it had no situs for tax
2 purposes within the taxing district in question) depends primarily upon the applicable
3 legislation relating to or affecting the subject of the abatement of assessments. It has
4 been frequently recognized that under a proper interpretation of the applicable
5 legislative enactments, an abatement may, in a proper case, be granted upon the
6 ground indicated.¹ A challenge to the validity of a tax on exempt property is a challenge
7 to the legality, not the correctness, of a tax; thus, such challenge may be **filed directly**
8 **in District court** without being reviewed by a jurisdiction's board of review and tax
9 commission.² see Exhibit E **72 Am. Jur. 2d State and Local Taxation § 683. Exempt**
10 **or nontaxable property**

13 Plaintiffs hereby notify; the entire world, and all parties; involved, that the
14 property in question, known as 20 Center Drive Crawfordsville, Indiana is a non-
15 domestic; mailing address/private/personal-property, held in a fee simple Allodial state
16 free hold under conventional ownership and not subject; to taxation. Plaintiffs also wish
17 to notify all parties & the entire world plaintiffs didn't receive lawful notice, of the tax
18 sale; until the action; was done. Depriving plaintiffs, of plaintiff's liberty of due-process,
19 of law.

21 The plaintiff's private property description is as follows if any of these
22 descriptions denoted; in the property's record, denote the property as tax-able it is
23 (incorrect) plaintiff noticed the use of the zip code, the plaintiffs already know, this is
24 wrong as plaintiffs are non-domestic; mailers.

1 ZIP Codes are applicable only to Federal territories and enclaves located within
2 the 50 States of the Union, and within the District of Columbia. -- cf. Piqua Bank v.
3 Knoup, 6 Ohio 342, 404) (1856) and U.S. v. Butler, 297 U.S. 1, 63 (1936)

4 Statutory Non-Domestic rate,
5 First Class U.S. Mail Fully Pre-Paid
6
7 12 Stat. At Law, Ch 71, Sec 23 Zip Code Exempt [DMM122.32] now [DMM602 1.3 e2]

8 **Federal Offense to collect additional postage**

9 18 U.S.C. 1726 ["Without United States"]

10 Legal LOT 34 FISHERO & FISHEROS 4 TH ADD
11 ADDRESS 20 Center Drive, Crawfordsville Indiana 47933

12 Certificate # 541400252

13 [Unit tax# 54-10-08-111-106.000-030]

14 If this unit tax # 54-10-08-111-106.000-030 denotes; the plaintiffs private-
15 property, held in a fee simple Allodial State free hold under conventional
16 ownership & used as a home, as tax-able, the number, is incorrect.

17 Property tax rulings

18 Officers or agents of United States take property for the United States use, and
19 no compensation; is paid, for the property. The owner; may sue, the officers; or agents,
20 to recover; the property. United States v Lee 106 U.S. 196

21 States cannot take private property, by taxation; or for any use but public use; (IE
22 immanent domain) Cities cannot be authorized; to donate bonds, to private
23 corporations. Cole v Lagrange 113 U.S. 1 (This second ruling is from the Indiana
24 Supreme Court).

1 On May 21, 1895, the U.S. Supreme Court ruled that a direct tax; on personal
2 income, was unconstitutional as a result of the case of Pollock v. Farmers 'Loan and
3 Trust Company. The lawsuit, had been precipitated; by the 1894 Income Tax Act. The
4 Supreme Court's 5-4 decision stated that a "direct tax" on the "income; of real, and of
5 personal-property" was "unconstitutional and void."

7 "A state may not tax a person's property, or interest; which are not within it's
8 territorial-jurisdiction; and subject only to applicable and controlling federal law. State
9 taxation, is authorized limited, and regulated; by the State & Federal constitution, and by
10 state statute, enacted there under. Gray v Winthrop 115 fl 721, 156 so 270 pg 94 1978."

12 I Rebecca Hankins & David Roach hereby give notice of defieny of a tax situs.

13 I Rebecca Hankins hold the property in question in a fee simple Allodial state free
14 hold under conventional ownership. I Rebecca Hankins & David Roach hereby give
15 notice that I/we have no mortgage or mortgage credit on or secured by the land in
16 question situated within a particular state⁷ or the state of Indiana there is no evidence
17 of indebtedness secured by such a mortgage. Meaning no tax situs could exist. see
18 Exhibit F **84 C.J.S. Taxation § 156 Intangible personal property—Particular**
19 **obligations, securities, or interests.**

21 No state can impose taxes on I Rebecca Hankins conventional ownership of
22 land/Real property thus no Tax Situs could have existed on the real property in
23 question. Although rights in lands are to be regarded in many respects as localized at
24 the place where the land itself is located for purposes of taxation, many legal interests in
25 land other than conventional ownership may be subjected to taxation in states other
26 than the state in which the land is situated, such as the right to tax a valuable contract
27
28

1 for the purchase of land located elsewhere⁶ or the right to tax a mortgage on land
2 located in another state.⁷ see Exhibit G **84 C.J.S. Taxation § 151 Real property and**
3 **appurtenances and interests therein.**

4 "Since a state can levy a property tax; only on property, having a sit-us in the
5 state provisions, requiring all property within the state to be subject to taxation; it will not
6 be construed; to include property, which has no sit-us. Dept of Revenue v Brookwood
7 associates 324 So.2d 184 (1 DCA 1975), cert. den., 336 So.2d 600 (Fla. 1976)"

8 The property, in question; has no sit-us, so how is the property, in question being
9 taxed? Plaintiff's never knowingly; entered into any sit-us trust, so any trust claimed;
10 would be a fraud, and void abinitio; for lack of full, complete, and whole-disclosure.

11 **A corporation is domiciled for tax purposes in the state of its**
12 **incorporation, and in the absence of a statute to the contrary, its personal**
13 **property has its tax situs in that state unless a business situs has been**
14 **established elsewhere. 84 C.J.S. Taxation §§ 150-162 lays the grounds for a tax**
15 **situs.**

16 I Rebecca Hankins & David Roach have Property rights of exemption acquired
17 under statute, conventional ownership is not to be assessed and exempting Rebecca
18 Hankins's & David Roach land/private property for personal use/ from levy acquired
19 under both Federal, state statutes. And Federal, state Constitutions.

20 see Exhibit H 26 U.S.C.A. § 6334, I.R.C. § 6334. Property exempt from levy (13)
21 (i) any real property used as a residence by the taxpayer; or [residence meaning Home]

22 see Exhibit J 50 IAC 4.2-1-1.1 Primary definitions, (2)(n)(o) "Personal property":
23 (1) has the meaning set forth in IC 6-1.1-1-11; and 50 IN ADC 4.2-1-1.1 © 2021
24
25
26
27
28

1 (2) also includes nonautomotive equipment attached to excise vehicles.

2 (n) "Personal property and real property guide" means a listing of items of
3 machinery, equipment, or structures as to their assessability as real or personal
4 property for Indiana assessment purposes. Generally, if the item is directly used for
5 manufacturing or a process of manufacturing, it is to be considered as personal
6 property. If the item is land or a building improvement, it is to be considered as real
7 property.
8

9 (o) "Placed in service" means the asset is ready and available for a specific use
10 whether in a trade or business, the production of income, or a tax-exempt activity. An
11 asset is assessed until it is retired from service. An asset is retired property from service
12 when it is permanently withdrawn from use by:
13

14 (1) sale or exchange of the property; (2) conversion to personal use; (3)
15 abandonment; (4) transfer to a supply or scrap account; or (5) property is destroyed.
16

17 Rebecca Hankin's private property for personal use was purchased as a private
18 domicile/home for personal use, held in a fee simple Allodial state free hold under
19 conventional ownership; thus, rendering the property retired property from service.

20 Thus, the property was not to be assessed for a tax per Exhibit A Ind. Code 6-1.1-2-7 §

21 (1) (2) &(3) Exempt property & the above statutes. The property was not
22

23 (1) held for sale in the ordinary course of a trade or business;

24 (2) held, used, or consumed in connection with the production of income; or

25 (3) held as an investment
26
27
28

1 Property rights acquired under a statute, duly adjudged to be constitutional, are
2 valid legal rights that are protected by the constitution, not by judicial decision. see
3 Exhibit K **16B Am. Jur. 2d Constitutional Law § 647 Statutory property rights.**

4 Recitals in public statutes of matters of fact are admissible as evidence of such
5 facts¹. It is the operative text of the legislation, not prefatory findings, that people must
6 obey and that administrators and judges enforce.⁵ see Exhibit L **82 C.J.S. Statutes §**
7 **393 Facts recited in statutes as evidence**

8 The Indiana property tax is a "ad valorem tax". An "ad valorem tax" is a tax
9 levied on **property or an article of commerce** in proportion to its value as determined
10 by assessment or appraisal. see Exhibit M **Westervelt v. Woodcock, 15 N.E.3d 75**
11 **(Ind. Ct. App. 2014).**

12 This means the **property or article of commerce must actually have a public**
13 **purpose or use in a business** before it can be assessed in proportion to its value.

14 Mere conventional ownership alone is not taxable as if it was, it would render
15 property rights and conventional ownership of property a barren right. It also means an
16 "ad valorem tax" is a type of **use tax** placed on the value of **property or an article of**
17 **commerce** used for a public purpose.

18 The state may tax that which it can prohibit under the States' police power. see
19 Exhibit N **84 C.J.S. Taxation § 7 Generally** Further evidence backing the fact the "ad
20 valorem tax" is a type of **use tax** placed on the value of **property or an article of**
21 **commerce** used for a public purpose in a business. A state may lawfully exercise its
22 police power to protect the public health, safety, welfare, and morals by promulgating
23 laws and regulations that reasonably regulate occupations.¹ States exercise their right
24
25
26
27
28

1 of taxation under the states police power. see Exhibit O **16A Am. Jur. 2d**
2 **Constitutional Law § 356 Regulation of occupations pursuant to police power,**
3 **generally.** 2021.

4 **84 C.J.S. Taxation § 166 Liability, generally**

5 **Corporations and their property and franchises are the legitimate subjects**
6 **of taxation under valid legislative enactments, and general rules governing the**
7 **construction and operation of tax statutes govern tax statutes with respect to**
8 **corporations in particular.**

9
10 In the absence of an exemption, corporations and their property and franchises
11 are as much the legitimate subjects of taxation as any other persons or property within
12 the reach of the state's sovereign power.¹ A corporation's charter does not determine its
13 liability for taxation.² Thus, under statutes providing for the taxation of property
14 generally, the property of corporations is included unless covered under the scope of an
15 exemption.³

16
17 All taxation of corporations, however, must be grounded in valid and effective
18 legislative enactments, whether general or special,⁴ which must be cast in clear
19 unambiguous language.⁵ In accordance with the principle governing tax statutes
20 generally,⁶ those relating to corporations and corporate property must be construed in a
21 reasonable manner that carries out the plain intention of the legislature.⁷ Statutes that
22 impose taxes on corporations must be construed as prospective in operation if a
23 legislative intent to apply the tax retroactively is not apparent⁸ or if a retroactive
24 application would create an unfair result.⁹

1 A tax may be imposed on the property of a domestic corporation within the state
2 regardless of the form of business.¹⁰ Thus, a state may tax the privilege of exercising a
3 corporate franchise within the state, measured by the value of the property located
4 within the state.¹¹ With respect to liability to taxation, a corporation and its stockholders
5 are regarded by the law as separate persons.¹² A corporation may lawfully manage its
6 affairs so as to save taxes¹³ as legitimate means to minimize taxation are the
7 prerogative of any business and perhaps the dictate of marketplace competition.¹⁴

8
9 **84 C.J.S. Taxation § 173 Corporate property, generally Except insofar as**
10 **exempted, all the property of a corporation within the territorial limits of the state**
11 **is subject to taxation as if it were held by an individual.**
12

13 The property in question was not taken for, and has no public purpose. see
14 Exhibit P **71 Am. Jur. 2d State and Local Taxation § 3 Nature and purpose of tax—**
15 **Necessity that tax be for public purpose** A public purpose is necessary to justify any
16 exercise of the taxing power.¹
17

18 While it is generally agreed that an attempt to raise money by taxation for private
19 purposes is unconstitutional, the authorities are not in agreement in respect to what
20 constitutional provision is thereby violated, some states expressly limiting the power of
21 taxation to purposes which are public in their nature. 1 Other states deem taxation for a
22 private purpose as a taking of property for a use not public in violation of the
23 constitutional provision which is usually considered as a limitation on the power of
24 eminent domain.² In still other states, the levy of a tax for a purpose not public has been
25 declared to be inconsistent with the republican form of government guaranteed by the
26 constitution.³ The levy of what purports to be a tax for a purpose not public is most
27
28

1 obviously objectionable as the taking of the property of the persons assessed without
2 due process of law, and to impose it is a mere spoliation of the individual without the
3 sanction of any of the precedents constituting due process of law.⁴ The right of private
4 property, guaranteed by the state and federal constitutions, is subject to the
5 governmental power of taxation, but the power to tax can be exercised only to raise
6 money for a purpose public in nature. 5 see Exhibit Q **71 Am. Jur. 2d State and Local**
7 **Taxation § 36 Constitutional basis of requirement of public purpose.**

8
9 see Exhibit R **67B Am. Jur. 2d Sales and Use Taxes § 156 Nexus between**
10 **state and use of property being taxed.** For a use tax to meet the first prong of the
11 test for constitutionality under the Commerce Clause, that is, the requirement that the
12 state have a sufficient nexus with the use of the property being taxed,¹ the taxpayer
13 must substantially avail itself of the privilege of doing business in the taxing state.²

14 **Power to tax that which sovereignty has declared to be illegal**

15
16 The state may tax that which it can prohibit.¹⁸ see Exhibit N **84 C.J.S. Taxation**
17 **§ 7 Generally.** see Exhibit N

18
19 The state cannot prohibit conventional ownership the constitutionally protected
20 rights to acquire,² possess,³ hold, enjoy,⁴ use,⁵ manage,⁶ insure,⁷ defend and
21 protect,⁸ and improve⁹ property, and the right to devote property to any legitimate
22 use.¹⁰

23
24 In this case private property for personal use as a private domicile/home, held in
25 a fee simple Allodial state free hold under conventional ownership.

1 The police power cannot extend beyond the necessities of a case and be made a
2 cloak to destroy constitutional rights as to the inviolateness of private property. Scrutton
3 v. Sacramento County, 275 Cal. App. 2d 412, 79 Cal. Rptr. 872 (3d Dist. 1969).

4
5 An owner cannot be deprived of any of the essential attributes which belong to the
6 right of property.¹ Included within the right of property which is constitutionally protected
7 are the rights to acquire,² possess,³ hold, enjoy,⁴ use,⁵ manage,⁶ insure,⁷ defend and
8 protect,⁸ and improve⁹ property, and the right to devote property to any legitimate
9 use.¹⁰ Indeed, the substantial value of property lies in its use; if the right of use is denied,
10 the value of the property is annihilated and ownership is rendered a barren right.¹¹ see
11 Exhibit S **16B Am. Jur. 2d Constitutional Law § 634 Particular property rights in**
12 **context of constitutionally guaranteed property rights.**

13 **Deprivation of Property Rights in Covenants.**

14
15 The American Peoples' property rights are derived from both the United States and
16 Indiana Constitutions. The Fifth Amendment to the United States Constitution, made
17 applicable to the states by the Fourteenth Amendment, provides, in pertinent part:
18 nor shall any person be deprived of life, liberty, or property, without due
19 process of law; nor shall private property be taken for public use, without just
20 compensation.
21

22 The due process clause of the Fourteenth Amendment further states:
23 nor shall any State deprive any person of life, liberty, or property, without due
24 process of law; Of equal import, the Indiana Constitution provides, in Article I, § 21:
25 No man's property shall be taken by law, without just compensation; nor, except in
26 case of the State, without such compensation first assessed and tendered.
27
28

1 In Pulos v. James (1973), 261 Ind. 279, 302 N.E.2d 768, our supreme court
2 interpreted these constitutional provisions to prohibit the taking of private property, i.e.,
3 private rights granted by subdivision covenants, for private use. Citing several
4 Massachusetts cases with approval, it said . . . Restrictive covenants] are real estate.
5 They are part and parcel of the land to which they are attached and with which they
6 pass by conveyance
7 It is beyond the legislative power to take against his will, the property of one and
8 give it to another for what the court deems private uses, even though full compensation
9 for the taking is required If the statute is merely for the benefit of individual property
10 owners, the purpose does not justify the taking of a right in land against the will of the
11 owner. Pulos, 302 N.E.2d at 773-774.
12

13 Thus, a property owner "is secure under the Constitution in his right to keep what
14 is his own, even though another wants it for private uses" Id. Pulos also said even
15 if such legislation was premised on benefitting the public good, it was still
16 unconstitutional because no attempt was made to compensate the owners:
17 It was for [the property owners'] benefit that the restrictive covenants were
18 imposed. Their right to have them enforced is a property right and may not be taken
19 from them without just compensation. Thus, even if it were maintained that the vacation
20 of the restrictions was for the public good, we would run afoul of sections 21 and 23 of
21 Article I of our state constitution and the due process clause of the Fourteenth
22 Amendment to the Constitution of the United States. Id. 302 N.E.2d at 774.
23 In a final comment, the Pulos court discussed the prohibition of contracts which are
24 against public policy. The court conceded the legislature may prohibit such contracts.
25
26
27
28

1 However, it concluded the legislature may not impair previously legal contracts where
2 the rights therein granted have already vested. Id. at 775. See also Supreme Council
3 Catholic Knights of America v. Logsdon, et al. (1915), 183 Ind. 183, 108 N.E. 587, 592;
4 Imler, supra.

5
6 In such cases, our authority on review is clear:

7 . . . courts may look to the character and reasonableness of the limitation for the
8 purpose of determining whether or not it reaches beyond the scope of necessary
9 protection and prevention. Pizza Hut of Muncie, Inc., 357 N.E.2d at 737. See also
10 Department of Insurance v. Schoonover (1947), 225 Ind. 187, 72 N.E.2d 747;
11 Weisenberger v. State (1931), 202 Ind. 424, 175 N.E. 238.

12
13 Recently, our Indiana Supreme Court laid down a two-pronged test to be used in
14 determining whether a statute or regulation constitutes a taking under the U.S.
15 Constitution's Fifth Amendment: whether or not the regulation (a) substantially advances
16 a legitimate state interest, and (b) deprives the owner of the economically viable use of
17 his property. Justice DeBruler, speaking for the court, said:

18
19 The essence of the first prong of the test is whether government had the right to
20 exercise its police power in the manner it did, regardless of the burden to property
21 owners. Or, in other words, it asks the question: has government regulated where it
22 should not have done so? If the regulation does not bear a substantial relation to the
23 legitimate ends sought to be achieved, either through a failure of the statute as a whole
24 to serve those ends or as applied to a particular piece of property, then the exercise of
25 the police power is deemed to be unreasonable.

26
27 . . . The essence of the second prong of the test is whether government has regulated
28

1 to a greater extent than it should have so that a land owner has been effectively
2 deprived of productive use of his property. Dept. of Natural Resources v. Indiana Coal
3 Council, Inc. (1989), Ind., 542 N.E.2d 1000, 1002-1003, citing Nollan v. Calif. Coastal
4 Comm'n. (1987), 483 U.S. 825, 834, 107 S. Ct. 3141, 3146, 97 L. Ed. 2d 677, 687.

5 A proper exercise of the state's police power must benefit the general public, not merely
6 a small group of its citizens. The police power should not be used for the benefit of a
7 small group in the guise of benefitting the public. Pizza Hut of Muncie, Inc., supra, 357
8 N.E.2d at 737, and Holt, supra, 108 N.E.2d at 637.

9 After careful consideration of the above precedent, we have determined
10 amended Sec. 14 is not a valid exercise of the state's police power because it (a)
11 violates the residents' Fifth and Fourteenth Amendment rights under the U.S.
12 Constitution, and their rights under Article I, § 21 of the Indiana Constitution, and (b)
13 fails the first prong of the Indiana Coal test. IV. Fifth Amendment Violation.

14 In Nollan, supra, the progenitor of Indiana Coal, seacoast landowners wanted to
15 build a permanent home to replace a cottage located on their land. The California
16 Coastal Commission conditioned the issuance of its permit to do so upon the Nollans'
17 granting the public an easement to pass across their beach, which was located between
18 two public beaches. The Nollans were to receive no compensation therefor, only the
19 permit. The Commission argued its requirement was not a "taking" under the Fifth
20 Amendment, it was merely a restriction upon the use of the Nollans' property, i.e., a
21 legitimate exercise of its police power. The Court rejected that argument, saying
22 Perhaps because the point is so obvious, we have never been confronted with a
23 controversy that required us to rule upon it, but our cases' analysis of the effect of other
24
25
26
27
28

1 governmental action leads to the same conclusion. We have repeatedly held that, as to
2 property reserved by its owner for private use, the right to exclude [others is] 'one of the
3 most essential sticks in the bundle of rights that are commonly characterized as
4 property.'" *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S. Ct.
5 3164, 3174, 73 L. Ed. 2d 868 (1982), quoting *Kaiser Aetna v. United States*, 444 U.S.
6 164, 176, 100 S. Ct. 383, 391, 62 L. Ed. 2d 332 (1979). In *Loretto* we observed that
7 where governmental action results in "[a] permanent physical occupation" of the
8 property, by the government itself or by others, see 458 U.S., at 432-433 n. 9, 102 S.
9 Ct., at 3174-3175, n. 9, "our cases uniformly have found a taking to the extent of the
10 occupation, without regard to whether the action achieves an important public benefit or
11 has only minimal economic impact on the owner," *id.*, at 434-435, 102 S. Ct., at 3175-
12 3176. We think a "permanent physical occupation" has occurred, for purposes of that
13 rule, where individuals are given a permanent and continuous right to pass to and fro,
14 so that the real property may continuously be traversed, even though no particular
15 individual is permitted to station himself permanently upon the premises. *Nollan*, 107 S.
16 Ct. at 3145.

17
18
19
20 It is hornbook law that the exclusive right to occupy and possess real property is
21 a fundamental property right. 72 C.J.S. Property § 2 (2010). Real property carries with it
22 a bundle of rights and one of the fundamental rights in that bundle is ownership.
23
24 American Jurisprudence 2nd 1964 vol. 16 § 362 Nature of Right guaranteed The right of
25 property, is a fundamental, natural, inherent, and unalienable right..... In fact, it does not
26 owe its origin; to the constitutions; which protect it, for it existed before them. It is
27
28

1 sometimes characterized judicially; as a sacred right, the protection of which, is one of
2 the most important objects; of government. Pg. 691

3 Another fundamental right in that bundle of rights is the right to possession and
4 enjoyment of the property. When a written contract grants the right of possession of real
5 property, the contract grants a real property interest. The right to possession may be
6 temporary, it may be subject to certain conditions, and it may be inferior to other rights
7 in the bundle, but it is an interest in real property. *Manufactured Housing Communities*
8 *of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000)

9 The Commission also argued the easement there requested was simply one part
10 of a comprehensive program to provide continuous public access to the beach as the
11 lots undergo development or redevelopment. In answer to that proposition, the Supreme
12 Court said

13 That is simply an expression of the Commission's belief that the public interest
14 will be served by a continuous strip of publicly accessible beach along the coast. The
15 Commission may well be right that it is a good idea, but that does not establish that the
16 Nollans (and other coastal residents) alone can be compelled to contribute to its
17 realization. Rather, California is free to advance its "comprehensive program," if it
18 wishes, by using its power of eminent domain for this "public purpose," see U.S. Const.
19 Amdt. V; but if it wants an easement across the Nollans' property, it must pay for it.
20 Nollan, 107 S. Ct. at 3150.

21 Likewise, here. Each proposed group house will be a permanent structure in the
22 subdivision where each developer proposes to locate them, no mere easement is
23 involved. Under Nollan, a "permanent physical occupation" will occur by a commercial
24

1 structure which will be a multi-person, not a single family residence. Both these
2 conditions violate each subdivision's covenants. Thus, the residents' Fifth Amendment
3 rights would be violated if such occupation was to occur or continue unabated.
4 Patently, such "permanent physical occupation" is substantially more than a mere
5 restriction upon the use of the residents' property. Even if the state was the moving
6 party here, it would have to "pay for it", as was the case in Nollan. Because the statute
7 makes no provision for payment, and private parties cannot condemn the property
8 interests of other private property owners, amended Sec. 14 constitutes an invalid
9 exercise of the state's police power, Nollan, supra; Indiana Coal, supra; Pulos, supra,
10 both as to the U.S. Constitution's Fifth Amendment and the Indiana Constitution's Article
11 I, § 21. Fountain Park Co. v. Hensler (1927), 199 Ind. 95, 155 N.E. 465, 469.

12 Bogert, Trust & Trustees, 2nd Ed., § 1003, pp. 517-520:

13 "In a number of cases where the interests of equitable life cestui and legal or
14 equitable remainderman have become vested in the same person by conveyance or
15 operation of law, after the trust began, the courts have decreed that the trust was ended
16 or terminable; but in other cases, where some useful purpose was deemed to be
17 capable of accomplishment by the continuance of the trust, the courts have refused to
18 regard the single ownership of the two items of property as fatal to the trust." See
19 generally: Brooks v. Davis (1913), 82 N.J. Eq. 118, 88 A. 178; Rowley v. American Trust
20 Co. (1926), 144 Va. 375, 132 S.E. 347; Gillogly v. Campbell (1936), 52 Ohio App. 43, 2
21 N. E. 2d 620; Nichols v. First Nat. Bank of Baker (1953), 199 Or. 659, 264 P. 2d 451; In
22 re Bonham's Estate (1958), 393 Pa. 355, 143 A. 2d 50.

1 **136 Am.Jur. Proof of Facts 3d § 15. Causes of action for fixtures—**

2 **Conversion**

3 Conversion is the wrongful exercise of dominion over property to the
4 exclusion of the rights of the owner or withholding it from the true owner's possession
5 under a claim inconsistent with the owner's rights.¹ The four basic elements of
6 conversion are:
7

- 8 • (1) the plaintiff's ownership or right to possession of the property at the time
9 of the conversion;
- 10 • (2) the defendant's conversion by a wrongful act or disposition of the
11 plaintiff's property rights;
- 12 • (3) a demand by the plaintiff for the property's return, and
13 • (4) a plea for an award of damages.²

14 There is no prejudgment writ for immediate possession similar to that of a writ of
15 replevin. Further, while replevin can arise from rights of contract, conversion is an
16 intentional tort.³

17 It is not necessary that the property be wrongfully obtained,⁴ but the
18 withholding must be done in derogation of the true owner's rights.⁵ Thus, conversion will
19 lie when the defendant lawfully obtained possession of the property as occurs when a
20 tenant places an item of personalty onto leased premises to use it in a business. The
21 plaintiff must demand return or delivery of the property, or otherwise offer the defendant
22 an opportunity to restore the property to the plaintiff's possession before the plaintiff can
23 maintain an action in conversion. There is no requirement that a plaintiff first exhaust his
24 remedies in a replevin action before electing to sue for conversion. If the evidence is
25
26
27
28

1 such that the elements of conversion may be proven, then such a claim may be pursued
2 without regard to other potential remedies.⁶

3 Let it be known I Rebecca Hankins & David Roach hereby give notice of
4 conversion, Extortion, and Robbery of private property held for personal use by way of
5 unlawful taxation without public purpose for a private individuals use. I Rebecca
6 Hankins & David Roach give notice of demand for the return of said private property. I
7 Rebecca Hankins & David Roach also gives notice of the right to an action by writ of
8 replevin for conversion, Extortion, and Robbery.
9

10 I Rebecca Hankins & David Roach hereby give notice of our intent to file a
11 Federal civil suit for a redress of grievance for the conversion, Extortion, and Robbery of
12 private property known as 20 Center Drive held for personal use. This civil suit is being
13 filed to recover damages & the rightful ownership and title to said property.
14

15 A challenge to the validity of a tax on exempt property is a challenge to the
16 legality, not the correctness, of a tax; thus, **such challenge may be filed directly in**
17 **district court** without being reviewed by a jurisdiction's board of review and tax
18 commission.² see Exhibit E 72 **Am. Jur. 2d State and Local Taxation § 683 Exempt**
19 **or nontaxable property**
20

21 see Exhibit T **63C Am. Jur. 2d Property § 46 Procedure in actions involving**
22 **property, generally; parties.** The law presumes that the infringement of a property
23 right is harmful and sustains a remedy to vindicate that right and prevent future harm.¹
24 The rules and principles relating to actions, generally,² apply to actions relating to real
25 property with the same force as to other actions.³ As a general rule, only the owner of
26 the fee has a right of action for damages to the fee. ⁴ A trespass on a right of property is
27
28

1 actionable upon any physical invasion of it, regardless of whether the invasion causes
2 measurable damages, 5 and an owner, whether he or she is in possession or not, may
3 recover for injury to his or her property by the negligence of another. 6 Further, the
4 owner of any particular right, interest, or estate in real property, 7 including one rightfully
5 in the occupancy or possession of the realty, 8 has, generally at least, a right of action
6 for damages for injury to his or her particular right, interest, or estate. Thus, the holder
7 of a nonpossessory interest in property can generally sue for damage to that interest. 9

9 see Exhibit U **63C Am. Jur. 2d Property § 42 Theft of personal property as**
10 **affecting owner's title and rights.** A property owner's rights are superior to any rights
11 of a subsequent possessor who has stolen the property or purchased stolen property. 1
12 **Indeed, the theft of goods or chattels does not divest one who owns, or has title to, such**
13 **property from his or her ownership of the property,** 2 since one cannot make good title to
14 that which he or she does not own. 3 The owner may follow and reclaim the stolen
15 goods wherever he or she may find them. 4 **If possession of the stolen goods by an**
16 **innocent subsequent purchaser may be deemed lawful, it is rendered unlawful by his or**
17 **her refusal to honor a demand by the true owner for their possession.** 5 **Even though**
18 **such a purchaser may be treated as having title and the right to possession as against**
19 **everyone but the rightful owner, a sale by the thief or by any person claiming under the**
20 **thief does not vest any title in the purchaser as against the owner,** although the sale
21 was made in the ordinary course of trade and the purchaser acted in good faith. 6
22 However, one without knowledge that money transferred to him or her has been
23 obtained through a felony, who receives it honestly and in good faith, although from the
24 thief, acquires good title to it even as against the true owner. 7
25
26
27
28

1 The owner may, through an appropriate action or proceeding, recover the stolen
2 goods⁸ or their value,⁹ either from the thief¹⁰ or from the estate of the thief,¹¹ or from
3 any other person who has not acquired such title and into whose possession they have
4 come, whether innocently or otherwise.¹² Thus, where an automobile which was
5 allegedly purchased with cash stolen in the course of a bank robbery, and which was
6 seized by federal officers upon the arrest of the suspected robbers, has been
7 purportedly assigned by the suspects, before their conviction, to attorneys acting on
8 their behalf in the prosecution, such attorneys cannot claim to have the status of bona
9 fide purchasers for value, since they could not have been oblivious to the "large black
10 cloud" hovering over the interest of the suspects in the chattel, and in that event, the
11 attorneys stand in no better position than the robbery suspects.¹³

14 In the face of a delay in proceeding to enforce a decree by application for writ of
15 assistance, the writ may be withheld only where it appears that rights have arisen or
16 been changed by reason of some subsequent agreement or happening rendering its
17 issuance unjust. See Exhibit Z **17 C.J.S. Assistance, Writ of § 8 Defenses**

19 **As the facts clearly show** I/we Rebecca Jane:-Hankins & David James:-
20 Roach are the rightful owner and occupants of the property, The property is and was at
21 the time exempt from taxation was taken and sold under color of law and under color of
22 official office, issuance of any writ of assistance would be unjust.

24 Further, the only matter which will be considered in passing on the application for
25 a writ of assistance is whether the applicant is entitled to be put in possession under the
26 decree; the parties are entitled to be heard on the application. See Exhibit Y **7 C.J.S.**
27 **Assistance, Writ of § 12 Issues, hearing, and evidence**

1 Rebecca Jane: -Hankins & David James: -Roach fear we will not be given
2 our chance to be heard on the matter and there is no question in this instance the
3 applicant is not entitled to be put in possession, leaving any issuance of any writ of
4 assistance to be unjust.
5

6 Rebecca Jane: -Hankins & David James: -Roach fear we will not be given
7 our chance to be heard on the matter as we have received a less than defective
8 allege notice for writ of Assistance from one Vincent C. Kregear 35277-49
9 Attorney at Law.
10

11 The alleged notice for writ of Assistance is improper¹, has no cause number
12 on it ², does not even say which Court the alleged writ of Assistance hearing is to
13 be held in ³, making it impossible to respond. This again would make any issuance
14 of any writ of assistance to be unjust as Rebecca Jane: -Hankins & David James: -
15 Roach would be deprived of our right to be heard. See Exhibit Z alleged notice for
16 writ of Assistance
17

18 The alleged notice for writ of Assistance makes reference to 54C01-1609-
19 MI-000727 A tax case from 2014 wherein Rebecca Jane:-Hankins & David
20 James:-Roach Objected and challenged the property tax.
21

22 The Assessor immediately discharged the tax debt and returned the property
23 without challenging the status of the property as not taxable for two reasons:
24

- 25 1. The property in question was and is exempt under Ind. Code 6-1.1-2-7 § (1)
26
27 (2) &(3) Exempt property.
28

exhibit are self-authenticating per Indiana & Federal rules of Evidence 902 § 5.

Dated this 11th of January, 2022

Electronically signed

Rebecca Jane Hankins

Rebecca Jane Hankins

David James Roach

David James Roach

Parties served

100 E Main St., Crawfordsville, IN 47933 Sherri Bentley, Montgomery County
Assessor Ph 765-364-6422 Email sherri.bentley@montgomerycounty.in.gov

Troy Tarpin Wingate Properties LLC Initiating PO Box 354 Connersville Indiana
by Vincent C. Kregear.35277-49 501 N. Central Ave. Connersville Indiana 47331
Email vkregear@greesonlaw.com

Montgomery County Council 100 E Main St Crawfordsville, IN 47933
Phone Business: (765) 364-6400 Email
jake.bohlender@montgomerycounty.in.gov

Vincent C. Kregear council of record 12048 Saint Marys Rd
Brookville, IN 47012-8824 Franklin County **Contact Vincent C. Kregear** (317) 941-
9864 Emails vkregear1@hotmail.com vkregear1@gmail.com or
vkregear@greesonlaw.com

Documents served

List of Exhibits and Exhibits
Federal civil summons
Federal Complaint and request for Injunction with attached
Complaint for Emergency Injunctive Relief for possible writ of assistance

Certificate of Service

i/we Rebecca Hankins and David Roach hereby certify that a copy of the forgoing
documents Complaint for Emergency Injunctive relief for possible writ of assistance and
exhibits, List of Exhibits, Federal civil summons, and Federal Complaint and request for
Injunction, were served upon the above forgoing interested parties and counsel of
record by email & United States mail. In accordance with Federal Rules of Civil

1 procedure rule 5.

2 Dated this 11 day of January, 2022. Electronically signed

3 Rebecca Jane Hankins

4

Rebecca Jane Hankins

5 David James Roach

6

David James Roach